

F.3d 11, 17 (1st Cir. 1999). Moreover, it should be noted that in advancing this argument, the Petitioner ignores the fact that the District Court made its determination without the complained-of verbiage.

Even if Petitioner maintained a valid argument regarding a plaintiff's burden of proof, which it does not, the case did not turn upon a runaway standard of review imposed by the Third Circuit, it turned upon the complete absence of evidence sufficient to sustain the plaintiff's burden in the face of a motion for summary judgment. As properly recognized by both Courts below, Petitioner's case was devoid of any evidence of a policy maintained by defendants to restrict any form of sale, evidence displaying consumers begrudgingly purchased Aerostar equipment as a result of the language contained in its Instructions for Continued Airworthiness, or any other form of undue pressure defendants imposed upon the marketplace as a result of monopolistic behavior, the type of evidence mandated by *Kodak*. Similarly, both Courts found that Petitioner's evidence failed to display any scientific approach displaying that defendants held monopoly power, as the plaintiffs did in *Kodak*. *Id.* at 481. Lacking such evidence, both Courts correctly determined that summary judgment was appropriate. Their well-reasoned application of existing precedent to the undisputed facts provided no grounds for Petitioner to obtain a Writ of Certiorari. Petitioner's application should thus be denied.

CONCLUSION

For the reasons set forth above, Defendants/Respondents respectfully request that the Petition for a Writ of Certiorari filed by the Plaintiff/Petitioner be denied.

Respectfully submitted,

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